

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 03 TEL AVIV 003205

SIPDIS

E.O. 12958: DECL: 05/15/2010

TAGS: [PREL](#) [PGOV](#) [KWBG](#) [GZ](#) [IS](#) [GAZA](#) [DISENGAGEMENT](#) [ISRAELI](#) [PALESTINIAN](#) [AFFAIRS](#)

SUBJECT: COURT RULING FAVORS FATAH IN GAZA ELECTION DISPUTE

Classified By: Pol/C Norm Olsen for reasons 1.4(b) and (d).

1. (C) Summary: In response to Fatah allegations of Hamas fraud, a PA appeals court in Khan Yunis invalidated in rulings May 18 and 20 results from the May 5 municipal elections affecting some 46,000 voters in Rafah, al-Bureij, and Bayt Lahiya, and ordered new elections in the affected polling stations. The Higher Committee for Local Elections (HCLE) announced that the new polling would take place on June 1. In a preliminary assessment, an international observer from NDI found the appeals process to be sound, but noted that the basis on which many of the results were annulled -- the use of the flawed civil registry -- seemed dubious, since the law allows use of this registry and it was in fact employed in all municipalities, and not only those where Fatah had lost and subsequently lodged appeals. Muhammad al-Zahar, the most visible Hamas leader in Gaza, accused Fatah of influencing the court to decide in Fatah's favor and threatened that Hamas would boycott the new voting. Subsequent statements by other Hamas members lead most observers to believe that Hamas will nonetheless participate in the re-runs. A leading Fatah official in Gaza, Abdullah Efrangi, told Poloff that he ascribed the mortar barrages raining down on Gaza settlements May 19-21 to two motives: to Hamas anger at Fatah's successful legal challenge to what he termed "widespread fraud," and an attempt to disrupt the Washington visit of PA President Mahmud Abbas. Hamas officials told the press, however, that the attacks were in direct response to "Israeli aggression" that led to the deaths of two Hamas militants May 18-19. Although few observers expect the re-run to yield significantly different polling results in either Rafah or al-Bureij, control of Bayt Lahiya, where Hamas reportedly holds a majority by one seat, could shift to Fatah. End Summary.

PA Courts Annul Election Results in Three Gaza Towns

2. (SBU) Following the May 5 municipal elections in eight Gaza Strip locales, Fatah petitioned the Election Appeals Court in Khan Yunis to invalidate results in Rafah, Bayt Lahiya, al-Bureij, and al-Mughragha, in all of which races Hamas won majorities of municipal council seats. Fatah charged that Hamas supporters had manipulated the civil registry lists -- used to supplement the voter registration lists developed by the Central Election Committee (CEC) for the January presidential elections -- and rigged the vote counting in a number of polling stations in favor of Hamas. The court upheld Fatah's charges and annulled results from a number of Rafah polling stations on May 18, and annulled results from al-Bureij and Bayt Lahiya on May 20. The court found that the challenge in al-Mughragha was unfounded and upheld the election results there. Some 20 other appeals contesting Fatah losses in the West Bank were also largely dismissed by the courts.

3. (SBU) According to a local observer of the court proceedings interviewed by a USAID staff member, the court determined that the Higher Committee for Local Elections (HCLE) had behaved in a manner "biased towards one party" and "did not administer elections in a fair manner." Fatah Central Committee member and Head of Fatah's Office of Mobilization and Organization in the Gaza Strip Abdullah Efrangi claimed that these decisions will affect some 29,000 voters in Rafah, 15,000 voters (almost half of the electorate) in al-Bureij, and some 2,600 voters in Bayt Lahiya. The HCLE met May 23 and announced that re-runs of elections in the affected polling stations will be held on June 1.

The Charges

4. (C) An NDI election observer present when the Rafah decision was handed down May 18 reported that the court decision in Rafah was based, at least in part, on the fact that the HCLE managed to verify the right of some 600-1,000 individuals to vote at civil registry stations only at 1830 hours on election day, when most of those affected had already given up and gone home. While the full, detailed account of the court decision has not been made public, he said, the crux of the complaints were problems with the civil registry voting lists. Anecdotally, observers and voters alike noted the presence in some polling stations of what

have been termed the "burkha brigades," or large numbers of veiled women who were reportedly allowed to vote (some claim multiple times) without removing their veils to allow confirmation of their identities.

15. (C) Fatah also charged that, in some instances, such as in Rafah, the majority of the HCLE members were at least sympathetic to Hamas, and invalidated ballots for no reason other than they were for Fatah. (Note: A large number of electoral workers are drawn from the Ministry of Education, which, in many areas of Gaza is dominated by Hamas members and supporters. End Note). The appeal also charged that votes had been cast in the names of people known to be deceased, abroad or in prison, although there is no indication from the summary court decision released to date of how widespread these activities may have been. Election day observers, including those from NDI, did not, however, indicate large-scale problems that would have invalidated the election results. Efrangi said he had instructed Fatah's legal team to prepare a detailed account of the alleged fraudulent activities that would be released soon.

Court Decisions Appear to Be Sound, But...

16. (C) The same NDI observer said in a preliminary assessment that the appeal process itself appeared to be sound. Palestinian lawyer Ahmad Mughanni, representing Fatah before the appellate court, reported that the court had listened to 27 witnesses over three days before deciding the case. The case is weakened, however, by the fact that the Palestinian Legislative Council approved use of the civil registry to supplement voter registration lists compiled by the CEC in order to ensure the widest possible enfranchisement -- despite the fact that the civil registry is known to contain outdated information. This, at least in theory, calls into question election results elsewhere, a point made in a statement by the Palestinian Center for Human Rights. The courts ruled, however, only on the specific complaints brought before them, all of which were brought by Fatah and all of which were in municipalities where Fatah had not won majorities. A Hamas spokesman in Gaza, Sami Abu Zuhri, accused Fatah and the PA of pressuring the court to annul the election results in an attempt to besmirch Hamas' reputation, and a Hamas representative on the HCLE announced that Hamas may boycott the election re-runs.

17. (C) After a meeting May 23 to implement the court decision, the HCLE charged its local members in Gaza to form new local committees and to prepare for the new elections. NGO monitors remain concerned that the same flawed civil registry lists will again be used to supplement the voter registration lists, although a spokesman for Minister of Interior Naser Yusuf announced May 23 that the Ministry would undertake to update the civil registry by removing the names of dead and imprisoned individuals.

"Hamas Is Making a Big Mistake"

18. (C) Efrangi told Poloff May 20 that "Hamas is making a big mistake,... thinking the PA could do nothing," in the face of Hamas' dirty tactics. Fatah, Efrangi continued, had answered the Hamas fraud with the language of law. Hamas, he said, responded in turn with the deluge of rockets and violence directed at Gaza settlements and IDF soldiers May 19-21, which he characterized as an attempt to disrupt President Abbas's visit to the U.S. Hamas officials claim, however, that the violence of the past week is a response to "Israeli aggression" that left two Hamas militants dead in Gaza, one of whom died in the first Israeli air strike in Gaza since the period of calm was declared.

19. (C) Efrangi said that "no trust remains" between Fatah and Hamas, which is, he charged, trying to usurp PA authority via fraudulent elections, while at the same time maintaining the faction's "clean" reputation. What Fatah will not do, Efrangi declared, is back down from its electoral challenge in order to quiet the situation. Taking what he clearly viewed as the high ground, Efrangi stressed that Hamas needs to come to Fatah to resolve the issue peacefully, rather than address it via media statements and rocket fire. Continuing his screed against Hamas in general and Hamas leader al-Zahar in particular, Efrangi denied that the May 19-20 Hamas attack against Kfar Darom settlement from an unused UNRWA school building was a joint operation including a Fatah-affiliated al-Aqsa militant. Hamas stands alone, Efrangi said, adding that Hamas was behind the entire operation by supporting "independent" militant operatives in Gaza.

110. (C) Comment: Efrangi's stand and other public statements by Fatah officials indicate that Fatah feels it has the moral high ground with its successful resort to the courts, in contrast to Hamas' rejection of the court decision.

International observers on election day did not report widespread problems in Gaza, although both they -- and Hamas -- warned before earlier rounds of elections against use of the outdated civil registry. Although few expect the overwhelming majorities won by Hamas in Rafah and al-Bureij to change significantly, Bayt Lahiya is a closer race that may shift control of the council into Fatah hands. The HCLE's decision to re-form the local commissions to supervise the new polling is a welcome improvement to the process, as it addresses the inadvertent domination of these bodies by Hamas supporters through over-reliance on Ministry of Education officials.

Visit Embassy Tel Aviv's Classified Website:
<http://www.state.sgov.gov/p/nea/telaviv>

You can also access this site through the State Department's Classified SIPRNET website.

KURTZER